

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

State of Montana v. Abbott Labs., Inc., et al.,
D. Mont. Cause No. CV-02-09-H-DWM

*State of Nevada v. American Home Products
Corp., et al.*,
D. Nev. Cause No. CV-N-02-0202-ECR

**PLAINTIFF STATES OF MONTANA AND NEVADA'S RESPONSE TO
DEFENDANTS' MOTION FOR CLARIFICATION OF CMO 10**

Defendants request for clarification is not opposed by Montana and Nevada ("States") to the extent it applies to defendants not jointly named in the Montana/Nevada complaints and the AMCC for the reasons explained below.

Moving defendants actually comprise to different groups. There are defendants such as Abbott, Baxter, Bristol-Myers and others who are common to the AMCC and the Montana/Nevada complaints. These defendants urged the Court to adopt an order that would require coordination of the State cases with the proceedings going forward with respect to the AMCC. And the Court entered such an order. CMO No. 9 at pp. 3-5 (attached as Exhibit A). It would be inconsistent with these defendants' request for coordination to now order that the States' discovery schedule should be different. As authority for their new position on coordination, defendants point to the fact that the Court has not ruled on the motions to dismiss

the States' cases. However the Court in the AMCC has upheld consumer protection claims against the AMCC defendants and there is no reason to suggest the States' consumer protection claims would be dismissed. Therefore, in the interests of coordination, as to the joint AMCC/State defendants, CMO 10 should apply.

However, the States do recognize that certain defendants are not defendants in the AMCC or in the State cases, and that these defendants have raised issues regarding the adequacy of the County's pleadings with respect to these defendants and the Court has itself expressed concerns in this regard. The States take no position as to the applicability of CMO 10 to these county only defendants.¹

By /s/ Signature on file with the Court

DATED: April 1, 2004.

Steve W. Berman

Sean R. Matt

HAGENS BERMAN LLP

1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Thomas M. Sobol
HAGENS BERMAN LLP
225 Franklin Street, 26th Floor
Boston, MA 02110
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

COUNSEL FOR PLAINTIFFS
STATE OF MONTANA AND
STATE OF NEVADA

Brian Sandoval
Attorney General of the State of Nevada
L. Timothy Terry
Assistant Attorney General
100 N. Carson Street

¹ These defendants include what counsel at oral argument referred to as the "thirteen who want out."

Carson City, Nevada 89701-4714

ADDITIONAL COUNSEL FOR PLAINTIFF
STATE OF NEVADA

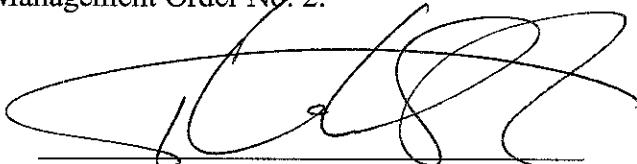
Mike McGrath
Attorney General of Montana
Kathy Seeley
Assistant Attorney General
Justice Building
215 North Sanders
P.O. Box 201401
Helena, MT 56920-1402
(406) 444-2026

Joseph P. Mazurek
CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH PLLP
100 North Park Avenue, Suite 300
P.O. Box 797
Helena, MT 59601-6263
(406) 449-4165

ADDITIONAL COUNSEL FOR PLAINTIFF
STATE OF MONTANA

CERTIFICATE OF SERVICE

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing Plaintiff States of Montana and Nevada's Response to Defendants' Motion for Clarification of CMO 10 to be served on all counsel of record electronically on April 01, 2004 , pursuant to Section D of Case Management Order No. 2.



Thomas M. Sobol, Esq.
HAGENS BERMAN LLP
225 Franklin Street, 26th Floor
Boston, MA 02110
Telephone: (617) 482-3700